Neutral Citation No: [2018] NICC 12	*Ref:* **COL10695**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **28/6/2018**

IN THE CROWN COURT AT CRAIGAVON

_____

SITTING AT LAGANSIDE COURT BELFAST

_____

R

-v-

THOMAS SCOTT McENTEE

_____

COLTON J

[1] The defendant was charged with the following offences:

First Count	-	Burglary, contrary to section 9(1)(b) of the Theft Act (Northern Ireland) 1969.
Second Count	-	Indecent exposure, contrary to Common Law.
Third Count	-	Theft, contrary to section 1 of the Theft Act (Northern Ireland) 1969.
Fourth Count	-	Theft, contrary to section 1 of the Theft Act (Northern Ireland) 1969.
Fifth Count	-	Aggravated burglary and stealing, contrary to section 10(1) of the Theft Act (Northern Ireland) 1969.
Sixth Count	-	Murder, contrary to common law – the particulars of the offence are that the defendant murdered Michael Cawdery on 26 May 2017. The prosecution ultimately accepted a plea of manslaughter by reason of diminished responsibility in respect of this count.
Seventh Count	-	Murder, contrary to common law – the particulars are the defendant murdered Marjorie Cawdery on 26 May 2017. The prosecution ultimately accepted a plea of manslaughter by reason of diminished responsibility in respect of this count.

Eighth Count	-	Aggravated vehicle taking causing damage to the vehicle, contrary to Article 172A(2)(d) of the Road Traffic (Northern Ireland) Order 1981.
Ninth Count	-	Dangerous driving, contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995.

Background circumstances

[2] On 25 May 2017 police received a report of a male person making a nuisance of himself in The Square, Warrenpoint at 18:09 hours. The male had a bottle of Buckfast with him and was in an intoxicated condition and approaching ladies in the street. The male was identified as the defendant, Thomas McEntee. He was taken to Newry train station by police at 18:56 hours. The male indicated that he intended to travel to Lurgan.

[3] At 22:00 hours that evening Maurice Mathers of Derrybeg Lane, Newry reported to police that there had been a break-in to the garage at his home. It emerged that this had been done by the defendant who had stolen a key from the garage. Having done so, he then slept in a van parked nearby until the following morning (Count 1).

[4] At 6.30am on 26 May 2017 the defendant called at his sister's house in Bessbrook. She had not seen her brother for several years. On arrival it was observed that he had a cut to the underside of his right arm. His shirt was ripped and there was blood on it. His sister dressed his wound. Whilst at the house he had some food and two beers. His sister last saw him around 8.45am but he told her he was going to a charity shop and would be back later.

[5] At approximately 9:47am the PSNI received reports from members of the public that a naked male was walking up the Millvale Road towards Camlough. A member of the public lifted clothes off the road and gave them to the police. The PSNI attempted to locate this male and a further report was received from the Mental Health Department at Daisy Hill Hospital that there was a naked male in their grounds (Count 2). Upon police arrival at Daisy Hill Hospital the naked male was identified as the defendant, Thomas McEntee.

[6] The defendant was then conveyed by ambulance to Craigavon Area Hospital and escorted there by the police. Mr McEntee disclosed to ambulance staff that he had suicidal tendencies. He agreed to remain at the hospital for assessment at the Bluestone Clinic. He was noted to have lacerations to his arms and neck.

[7] During his initial assessment in Accident and Emergency his demeanour changed and he left the hospital before a full assessment could be carried out.

[8] At approximately 12:07 hours police received a report from an employee at Winemark, 52 Lurgan Road that a male person had entered the premises and stolen a bottle of Oyster Bay wine (Count 3). The defendant is clearly identified on CCTV footage as the person who entered the premises and stole the wine.

[9] At approximately 12:20 hours the defendant was observed by Colin Ruddell of 36 Upper Ramone Park, carrying a bottle of wine. The defendant was standing at his back gate. He made off and Mr Ruddell subsequently realised that personal items had been stolen from his car, namely a compass, a torch, map and sunglasses (Count 4). The defendant headed in the direction of 42 Upper Ramone Park, the home of the deceased.

[10] Mr and Mrs Cawdery had left their home at approximately 12:08 hours and went to Tesco's which was their usual routine on a Friday and returned home at 13:30 hours. In the meantime the defendant had entered their home. He stole a Northern Bank cheque book and keys and had a knife with him when he entered the premises (Count 5).

[11] At approximately 15:15, Wendy Cawdery and her husband Charles Little returned home. Their property is directly beside the deceaseds' home. They observed the defendant crossing the courtyard and getting into Mr Cawdery's vehicle, a Renault Kango. The defendant made off crashing into the wall, driving through the front gates and exiting Upper Ramone Park causing extensive damage to the vehicle (Count 8).

[12] The vehicle was driven by the defendant and collided with two vehicles as it drove along Killicomaine Road. It was travelling at a high speed. Sharon Moore was driving her car when the defendant collided with the driver side of her vehicle. The defendant also caused a collision with a vehicle being driven by Lisa Gribben (Count 9).

[13] At approximately 15:15, Wendy Cawdery (the daughter of Mrs and Mrs Cawdery) entered her parents' home and saw her father and mother lying face down on the floor with blood and glass everywhere. She checked for a pulse but could not find one and tried to give her father mouth to mouth resuscitation. Paramedics and police arrived at the scene and confirmed that both Mr and Mrs Cawdery were dead.

[14] Police received a report of a suspicious male behind houses at Springfields. This male, who turned out to be the defendant, was described as wearing black jeans, a grey t-shirt and blue hoodie with a bandage on his wrist and appeared to be under the influence of drugs. On arrival, the police observed the defendant standing in the middle of cattle in the field. When searched he was found to have a large knife in his waistband. He also had a cheque book in the name of the victims. It emerged that the defendant had dressed himself in some clothing items belonging to Mr Cawdery and was wearing his jacket at the time of his arrest. Police also located

a torch and keys. At 17:04 hours he was arrested for the murders of Mr and Mrs Cawdery (Counts 6 and 7). He made no reply to the police caution.

[15] The forensic evidence established that Mr and Mrs Cawdery had been subjected to a vicious and frenzied knife attack by the defendant in their house. A total of six different knives had been used.

[16] Post mortems of Michael and Marjorie Cawdery were conducted on 28 May 2017 by Professor Jack Crane.

[17] In respect of Michael Cawdery he concluded the cause of death was:

(a) Shock, haemorrhage and subarachnoid haemorrhage due to;

(b) Stab wounds, incised wounds and blunt force trauma.

[18] Mr Cawdery had injuries to his head, neck, chest, abdomen, left upper limb, right upper limb and back.

[19] In summary he had been stabbed and beaten and died as a result of his injuries, probably as a result of blood loss, shock and bleeding over the brain surface.

[20] Death had not been immediate and there was clear evidence in the form of injuries to his hand that he was conscious when some of the injuries were inflicted.

[21] In respect of Marjorie Cawdery Professor Crane concluded that the cause of death was:

(a) Haemorrhage due to;

(b) Stab wounds and incised wounds to scalp, neck and limbs. She had injuries to her scalp, face, neck, left upper limb, right upper limb, left lower limb and right lower limb.

[22] At the time of the killings Mr Cawdery was 83 having been born on 31 August 1933. Mrs Cawdery was also 83 having been born on 27 September 1933.

The defendant's interviews

[23] The Defendant was interviewed between 27.5.17-29.5.17 on nine occasions and on 4.10.17 on two occasions.

<u>Interview 1</u>

27.5.17 (22:05-22:33 hours)

No comment interview

Interview 2

28.5.17 (13:50-15:01 hours)
No comment interview
At commencement he made comment of 'bananas and plums'.

Interview 3

28.5.17 (17:19-18:03 hours)
Responds to images (photos) of 42 Upper Ramone Park by stating he doesn't recognise the location and states police are setting him up.

Interview 4

Thomas McEntee responds to images of 42 Upper Ramone Park by stating that he has never seen them before. He denies being at 42 Upper Ramone Park on 26.5.17.

Thomas McEntee states that police should check reports from the hospitals about how he came to have an injury on his inner arm but is evasive about the cause of the injury.

Thomas McEntee is shown a picture of the Adidas trainers recovered from the shower at 42 Upper Ramone Park and denies that they are his. He states he only owns one set of footwear and will only describe them as 'boots'.

He claims that his memory of recent events is 'blank' other than when he was in a field petting cows.

Thomas McEntee states that he has been in many hospitals over the last couple of days 'trying to get assessed and trying to get help'. He states that he is 'not well in the head'.

He advises that he told his sister Donna that he wasn't well.

He gives a list of medication that he is on: Seroquel 800milligrams (4 in the morning, 4 at night), Diazepam 15milligrams (five, three times a day), Duloxetine 120milligrams (once a day), Pregabalin (once a day).

Thomas McEntee is asked if he has been taking his medication and he says, 'not really no. Because I've been trying to get my sa, the head sorted and when I was trying to get my head sorted when I was trying to that then I wasn't getting my tablets.'

He then states that he moved address/chemists and that was why he hadn't been able to get his medication but that he had wanted to. He blames his issues with his head solely on him not being able to get his medication. He states that he has moved his doctor from Derry to Newry and that it is a Dr McDowell from Cornmarket surgery.

Interview 5

Thomas McEntee is shown CCTV from Emma Tumilty's mobile phone at Millvale Road, Bessbrook on 26.5.17. He makes no comment.

He is shown CCTV from Craigavon Area Hospital on 26.5.17. He makes no comment.

He is shown CCTV from Winemark, Seagoe, Portadown on 26.5.17. He makes no comment.

He is shown CCTV from 36 Upper Ramone Park on 26.5.17. He makes no comment.

He is shown BodyCAM footage from his arrest on 26.5.17.

He makes no comment.

Interview 6

Thomas McEntee insults the interviewers but makes no notable comments

Interview 7

Thomas McEntee again states that he remembers being in a field with cows on the day of his arrest and states that he buried a dead duck in the field.

Thomas then begins to speak about things being hidden and generally saying things which appear to be nonsense. He starts randomly saying female names in relation to a question about his sister and saying nursery rhymes.

He is asked if he refused to take his medication the night before and he said he refused.

He is asked if he refused to take his medication that morning and he said he refused. He states to police that he had taken alcohol on 26.5.17 and no medication that date.

He is asked why he didn't take his medication on Friday 26.5.17 and he stated that, 'I had a wee bit of thinking to do'.

He states that, 'any person that's on prescribed ma medication right can take it when and if they want…. It doesn't have to be all the time taken all the time… there's many people take medication they cut it down for themselves for simply to say right I'll have this here this day I'll take that there…and I skip out I'm telling you the truth'. He goes on to state that you 'shouldn't always be listening to a fucken doctor anyhow should you like'.

Interview 8

He is asked about visiting his sister Leanne McEntee at 50 The Gardens, Bessbrook on the morning of 26.5.17. When the Police recount about her giving him a beer and refusing to give him a second one he steps in and advises that Leanne did give him a second beer. He then denies that Thomas McClatchey gave him a fresh shirt. He states that he was wearing a black and blue shirt when he arrived at their home on 26.5.17.

He advises that he remembers being picked up by people and taken to the Bluestone when asked about walking naked along the Millvale Road, Bessbrook on 26.5.17. He then states in the third person 'that person did that because he wasn't getting fucken help anywhere else off anybody else….seeking help where I wasn't getting it nowhere else I seeked help so I walked the whole way to mental health and from mental health then I was told that I was going to get brought to ahm straight down to what do you call that place there Bluestone, didn't happen all I remember is getting put in to an ambulance down there needle in my arm after that I can't remember nothing so'.

Thomas McEntee denies murdering Marjorie and Michael Cawdery.

Interview 9

Thomas McEntee states that he has no convictions. Police point out that he has 39 previous convictions and he then admits that he has previously been convicted of robbery.

Interviews 10 and 11

Thomas McEntee states that he had been off drink and drugs for 2 years and on 25 May 2017 he was in Warrenpoint and got drunk. He advises that he has no recollection of how he got to Newry that evening but remembers being at the train station and speaking to a member of staff there. He then states that he felt that he was being followed by a cult of demons/aliens and that he wasn't safe at the train station and left.

He advises that he broke into a home seeking somewhere safe to go by smashing a window in a garage door with his elbow. He advises that he reached his hand in

and turned the door handle with his hand. He states that he overheard voices above him and left.

He entered and made attempts to sleep in a van/lorry parked nearby where he had a few cigarettes and removed a pair of workman's gloves, goggles/glasses, a net type cap and covers for his shoes. He states that he left in the morning to travel to his sister's home where he arrived at approximately 06:00 hours. He states that he left the gloves at her home and does not know where the other items went.

Thomas McEntee was shown CCTV exhibit DMD1, this is CCTV from 23 Derrybeg Lane, Newry, and has identified the male breaking into the property as himself.

History of the proceedings

[24] The defendant was arraigned and pleaded not guilty to the two counts of murder and the seven related offences on the indictment on 13 April 2018. On that occasion preliminary medical evidence established that the defendant was fit to plead. At that stage the court was informed by counsel that further medical assessment was required to determine whether the defence of diminished responsibility was available to the accused on Counts 6 and 7, that is the murder counts.

[25] Following the completion of the medical evidence on behalf of both the prosecution and the defendant, the prosecution formally accepted the plea of guilty to manslaughter on Counts 6 and 7 on the grounds of diminished responsibility on 23 May 2018. The defendant entered guilty pleas in respect of the remaining counts.

The medical evidence in relation to the defendant

[26] The court received the following medical reports:

(a) Reports from Dr Adrian East, consultant forensic psychiatrist – who has treated the defendant – dated 21 May 2018 and 10 June 2018.

(b) Reports from Dr Christine Kennedy, consultant forensic psychiatrist – instructed by the PPS – dated 17 May 2018 and 1 June 2018.

[27] I am grateful to both Dr East and Dr Kennedy for their comprehensive and helpful reports and for the expedition with which they were prepared. There is no dispute between the doctors that the defendant meets the test for diminished responsibility. In his report of 2 May 2018 Dr East says:

> "*I believe Mr McEntee meets diagnostic criteria for the presence of paranoid schizophrenia … I believe that Mr McEntee's thought processes at that time would have been so affected by his delusional state that his ability to form*

rational judgments would have been substantially impaired." (paragraph 18.3)

[28] In her report, dated 17 May 2018, Dr Kennedy states as follows:

> *"6.4 He has historical diagnoses of alcohol dependence and EUPD. He has never had a formal assessment of his personality when free of alcohol or drugs and mental illness. He most probably has emotionally unstable traits.*
>
> *6.5 Since his arrest on current charges, he had a diagnosis of paranoid schizophrenia made by his treating consultant Dr East. He is now prescribing Clozapine, a medication used for treatment resistant schizophrenic illness. I would agree with this diagnosis.*
>
> *6.7 At the time of the offences based on the comprehensive multi-source information, it is my belief that he was actively psychotic and suffering from a schizophrenic illness since diagnosed. There is ample evidence of the presence of psychotic symptoms before, during and after the offences. Indeed psychosis persists today.*
>
> *6.8 Regarding psychiatric defences open to him, I am of the view that diminished responsibility (in the murder charge only) is available.*
>
> *6.9 …*
>
> *As outlined above, Mr McEntee was experiencing an extremely disturbed mental state or abnormality of mind as a result of a recognised mental illness (paranoid schizophrenia F20) at the relevant time. This would constitute an abnormality of mental functioning.*
>
> *The abnormality of mental functioning would have substantially impaired his ability to form a rational judgment.*
>
> *…*
>
> *It is highly likely that he perceived the couple as demonic or alien and felt threatened in some way. It would seem unlikely, given his previous history of offending, that he would have acted in this way under normal circumstances when not psychotic."*

[29] Having regard to the medical opinions set out above the prosecution, in the court's view, properly accepted a plea to manslaughter based on diminished responsibility.

Victim impact

[30] Before determining the appropriate sentence it is essential that I highlight the victim impact statements and material relating to the deceaseds' family that I have received. The court has read personal statements from members of the Cawdery family, including from the deceaseds' daughter Wendy and her husband Charles who came upon the awful aftermath of the killings. Statements have also been received from their grandson Alexander, Natasha who is the step-daughter of Wendy, Shirley their elder daughter, her husband Brian, their son Callum, the deceaseds' son Graham and Padraig who was Michael's brother.

[31] Each of these statements in their own individual and eloquent way demonstrate the profound personal grief of each of the authors. They have brought home to me the impact the tragic and traumatic death of Michael and Marjorie Cawdery has had on their immediate family. Phrases such as horrific, incomprehensible, utter bewilderment, feelings of utter hopelessness, unbearable loss, struggling to cope, feelings of guilt, devastation, helplessness, struggling with depression and anxiety and deep depression give a sense of how the family has been affected. Apart from the emotional trauma caused by these awful deaths it is clear that they also have had a very practical detrimental effect on members of the family. There have been financial implications, implications for the education of the younger members of the family and a requirement for on-going counselling. I am particularly struck by the way in which those who have made statements are worried and concerned about the impact the deaths have on other members of the family. This mutual concern and support is a credit to them. Most of all however the statements convey the very real attributes of Michael and Marjorie Cawdery. It was clear that they were greatly loved. I can only hope that in time the memories of two long lives, well lived will help comfort all of those bereaved by these senseless killings.

The appropriate sentence

[32] I am obliged to counsel for their written and oral submissions in respect of the appropriate sentence.

[33] Mr Irvine QC who appeared with Mr Joseph Murphy marshalled all the background facts of the case and the relevant legal authorities comprehensively and fairly. Mr Ciaran Mallon QC who appeared with Ciara Ennis on behalf of the defendant instructed by Mr Patrick McMahon, solicitor, presented his arguments with appropriate sensitivity to the family of the deceased whilst equally pursuing the best interests of his client.

Is a hospital order appropriate?

[34] In a case such as this the first issue to determine is whether or not a hospital order, with or without restrictions, would be an appropriate disposal. It is evident from the contents of the psychiatric reports that both clinicians are of the opinion that the imposition of a hospital order, with or without restrictions, under Articles 44 and 47 of the Mental Health (Northern Ireland) Order 1986 would not be an appropriate disposal.

[35] In his comprehensive reports Dr East sets out the history of the treatment the defendant has received under his care as a result of his transfer from Maghaberry Prison to the Shannon Clinic under the terms of Article 54 of the Mental Health (Northern Ireland) Order 1986, where he has remained since 18 January 2018.

[36] As a result of the treatment he has received it is Dr East's opinion that the defendant's treatment in hospital is now complete and that his mental illness is in a state of remission.

[37] Accordingly Dr East says in his report of 18 June 2018. That:

> *"6.5 As Mr McEntee's mental illness is in a state of remission I do not believe that he has a mental illness of a nature or degree which would warrant his detention in hospital. As such, I do not believe that the requirements for a hospital order are met.*
>
> *6.6 I believe that Mr McEntee would need to complete a sentence plan in order to reduce the likelihood of future offending. This would best be delivered in a custodial setting with ongoing monitoring on his return to the community. I am encouraged by Mr McEntee's engagement with therapeutic opportunities at the Shannon Clinic which has been excellent. This indicates to me that he is able to meaningfully benefit from the programmes that I believe will be expected of him in terms of risk reduction should he be subject to prison."*

[38] Dr East's view is based on his opinion that:

> *"6.3 As long as Mr McEntee continues to receive Clozapine therapy I can see no reason why his illness should relapse."*

[39] Dr Kennedy has discussed with Dr East the possibility that a restriction hospital order without limit be considered and stated her view as follows:

"2.11 … However, like Dr East, I would share the concerns that Mr McEntee might be considered at subsequent Mental Health Review Tribunals (to which he is regularly entitled) to no longer meet the criteria for detention in hospital. It is likely that after a concerted period of medical treatment in a secure psychiatric unit with limited access to destabilisers, Mr McEntee will present as stable. He has already demonstrated concerningly that even when quite mentally unwell he has an ability to present himself as mentally well, even to experienced mental health staff. A tribunal decision based on legal criteria for discharge being met could result in an individual of the highest risk being in the community relatively early with an unrealistic expectation that the risk could be managed by forensic and community mental health services alone."

[40] Dr Kennedy goes on to state:

"2.12 Following on from that, it would be preferable in my view to have robust risk management processes and a multi-agency approach re safeguarding the public in the future from any recurrence of life threatening harm. A ***custodial sentence*** *is thus also a consideration. Mr McEntee can be given the appropriate custodial sentence mindful of his background, current offences and future risks. Following custodial sentence he can be transferred very quickly from HMP Maghaberry back to Shannon Clinic for on-going treatment (his current bed could be held and his return occur within 2-3 days of sentencing). The transfer would occur under the auspices of Articles 53/55/47 of the Mental Health Order (Northern Ireland) 1986 negotiated by a psychiatrist and DOJNI. Further treatment in my view should involve a referral to the State Hospital Carstairs (provider of Northern Ireland high secure care) for assessment suitability for more specialist input there. Mr McEntee could spend time in secure psychiatric hospital(s) as determined by his needs for treatment. … There would of course need to be very close working over the years between Shannon Clinic, potentially the State Hospital, Prison Mental Health and the Prisoner Development Unit at HMP Maghaberry. … Dr East (our delegate) would need to remain actively involved in the coordinating of Mr McEntee's care and oversight of his mental health management."*

[41] Dr Kennedy acknowledges that there is medical opinion elsewhere in the UK that will recommend cases such as this be managed by forensic mental services by use of restriction hospital orders, citing the toxicity of prison for persons with mental illness, ready access to drugs and other hazards in the custodial environment, as well as poor quality mental health provision. The test for admission to hospital under the Mental Health Order in Northern Ireland is of course different from that in the rest of the UK, which is why Dr East points out that under the current criteria the defendant could in fact be released from hospital.

[42] Importantly Dr Kennedy concludes her final report by saying:

> *"2.13 … Local experience is that the offender can be sentenced to custody in NI with the needs for specialist care thereafter dictating the location of interventions. If for example it was shown later on that Mr McEntee's needs could not be met in prison, he could remain in hospital but of course remain a sentenced prisoner with release only determined by PCNI in due course. In practice these more bespoke arrangements allow for the needs of the patient prisoner and for society to be both met.*
>
> *2.14 I can confirm I have discussed the opinion with Dr East (treating consultant forensic psychiatrist Shannon Clinic and Community), and Dr Bownes (consultant forensic psychiatrist HMP Maghaberry) and in respect of speed of a transfer back from custody post sentencing with DOJNI."*

[43] Reassuringly Dr East, in his final report, says:

> *"6.7 Whilst I do not expect a relapse of illness in this case, I will retain clinical responsibility to ensure that Mr McEntee's mental health needs are met regardless of his disposal from the court. Should there be any evidence of deterioration in mental health in a sentenced prisoner I retain the ability to transfer Mr McEntee to hospital within the terms of Article 53 of the Mental Health (Northern Ireland) Order 1986. Given his risk profile, this should always be to a secure hospital.*
>
> *6.8 The time of sentencing is well recognised in the psychiatric literature as being associated with an increased risk of completed suicide. Given the nature of the index offences this would be particularly marked in Mr McEntee's case. I am mindful that the period of recovery from a major mental illness is also a vulnerable time. For*

this reason, it is my intent to retain Mr McEntee in hospital until he has been sentenced. Should he attract a period of custody I will arrange with the Department of Justice for him to be initially placed at the Regional Secure Unit as a transferred prisoner. I can then plan his return to prison in a safe and orderly manner to mitigate against the risks identified."

[44] In terms of the imposition of a hospital order the first condition found in Article 44 of the Mental Health (Northern Ireland) Order 1986 is not met. In my view neither is the second condition, namely that the court is of the opinion, having regard to all the circumstances, including the nature of the offence and character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable means of dealing with the case is by means of a hospital order. The medical evidence, together with the requirements of appropriate punishment and protection of the public overwhelmingly points towards a custodial sentence rather than a hospital order. Whilst the court has some concern about whether or not in fact the defendant will receive the appropriate treatment in a custodial setting, the opinions of Dr East and Dr Kennedy have reassured the court that this will occur in this case.

[45] Ultimately there was no dispute between counsel that a hospital order would not be an appropriate disposal in this case.

Discretionary life sentence, indeterminate sentence or extended custodial sentence?

[46] Manslaughter is a "specified offence" and a "serious offence" for the purposes of Chapter 3 of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). The provisions of Article 13 of the 2008 Order are engaged.

[47] The relevant statutory framework is set out in Articles 13 to 15 of the 2008 Order as follows:

"13.-(1) This article applies where –

(a) A person is convicted on indictment of a serious offence committed after 15 May 2008;

(b) The court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

(2) If –

(a) The offence is one in respect of which the offender would apart from this article be liable to a life sentence;

(b) The court is of the opinion that the seriousness of the offence, or of the offence and one or more of offences associated with it, is such as to justify the imposition of such a sentence,

the court shall impose a life sentence.

(3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall –

(a) Impose an indeterminate custodial sentence;

(b) Specify a period of at least two years as a minimum period for the purposes of Article 18, being such a period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it."

[48] Article 14 of the 2008 Order deals with the imposition of an extended custodial sentence in the following terms:

"14.-(1) This Article applies where –

(a) A person is convicted on indictment of a specified offence committed after 15 May 2008;

(b) The court is of the opinion –

(i) That there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences;

(ii) Where the specified offence is a serious offence, that the case is not one which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.

(2) The court shall impose on the offender an extended custodial sentence."

[49] The assessment of dangerousness is dealt with in Article 15 of the 2008 Order in the following terms:

"15.-(1) This Article applies where –

(a) A person has been convicted on indictment of a specified offence;

(b) It falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.

(2) The court in making the assessment referred to in paragraph (1)(b) –

(a) Shall take into account all such information as is available to it about the nature and circumstances of the offence.

(b) May take into account any information which is before it about any pattern of behaviour of which the offence forms part.

(c) May take into account any information about the offender which is before it."

[50] The first question therefore is whether the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[51] The applicable legal principles have been discussed by the Court of Appeal in **R v Sean Kelly** [2015] NICA 29 and **R v EB** [2010] NICA 40. The Court of Appeal has endorsed the approach of the Court of Appeal in England and Wales in the case of **R v Lang** [2005] EWCA Crim 2864. These authorities must of course be read in the context of the matters referred to in Article 15(2) of the 2008 Order. As Gillen LJ set out in the judgment of the court in **Kelly** the following principles can be distilled from the relevant authorities:

"(1) The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and can be taken to mean "noteworthy, of considerable amount or importance".

(2) Factors to be taken into account in assessing the risk include the nature and circumstances of the current offence, the offender's history of offending including not

just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrated any pattern and the offender's thinking and attitude towards offending.

(3) Sentencers must guard against assuming there was a significant risk of serious harm merely because the foreseen specified offence was serious. If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant."

[52] In terms of the material available to the court in addition to the circumstances of the offence itself and the very detailed medical evidence I also received a pre-sentence report from PBNI dated 21 June 2018.

Pre-sentence report

[53] The report sets out details of the defendant's background, much of which is included in the medical evidence.

[54] It is noteworthy that Mr McEntee, who was born on 27 March 1977, has had a most unfortunate and difficult past. Suffice to say that he has had an horrific domestic upbringing during the course of his childhood and teenage years. He has limited education and sporadic experience of employment. Prior to the incidents giving rise to these charges he has had a history of hospital admissions in relation to suicidal acts. He has had various references to hospitals over the years but there is a pattern of non-engagement around mental health services throughout his adult life.

[55] In terms of the defendant's attitude to the offences the Probation Service reports that:

"The defendant was calm and unemotional when discussing the death of Mr and Mrs Cawdery. He did recognise that he was responsible for the death of two innocent people and this in turn would have consequences in that he would face a long period of custody. The defendant also displayed a degree of awareness that he had caused distress and grief for the family of the victims."

[56] The probation report also refers to the defendant's criminal record which contains a total of 42 previous entries. He has convictions dating back to 1994. The convictions include; criminal damage, disorderly behaviour, drugs, supply/use, public order offences and common assault. Significantly, he has a previous conviction for robbery in 2008 in respect of which a custody probation order (3 years' imprisonment, 2 years' probation) was imposed at Armagh and South Down Crown Court.

[57] The Probation Service have assessed the defendant as being someone who presents with "*a high likelihood of reoffending*". Relevant factors in this assessment include:

- Lack of victim regard at the time of offence commission.
- Long history of mental health issues – diagnosis of paranoid schizophrenia.
- History of non-compliance with medications.
- Unpredictability of his behaviour.
- Lack of control over his actions.
- History of self-harm.
- Lack of insight into his mental illness at the time of the index offences.
- Misuse of substances.
- Limited family and social support.
- Absence of problem solving skills and coping strategies at the time of the index offence.

[58] In terms of risk of serious harm after a risk management meeting on 19 June 2018, the Probation Service came to the conclusion that the defendant has been assessed as "*not being a significant risk of serious harm <u>at this time</u>*" (my underlining). However, the report did express concerns in relation to the following:

- Confirmed diagnosis of paranoid schizophrenia.
- Current offence where the defendant kills two elderly vulnerable people in a violent, prolonged attack where both victims sustained multiple injuries resulting in fatality in both cases.
- Unpredictability of his behaviour when not in receipt of appropriate medication and proper care pathway.
- Use of weapons, namely knives.
- Lack of control over his behaviour when not in receipt of medication.
- History of non-compliance and non-engagement with medication at outpatient appointments.
- Lack of insight into his mental illness at the time the index offences took place.
- Ability to protect himself from reality and his emotions during offence.
- Evidence of hallucinations when index offences occurred.
- History of self-harming.
- Unresolved issues regarding a traumatic childhood.

Article 13(1)(b) of the 2008 Order – dangerousness

[59] Clearly the Probation Service was influenced by the fact that as a result of the therapeutic interventions whilst in the care of Dr East at the Shannon Clinic the defendant is now compliant with his course of medication and his illness is in remission. The report acknowledges that "*the need for ongoing psychiatric assessment over the course of any period of custody resulting from today's matter is essential*".

[60] Insofar as the pre-sentence report suggests that the defendant does not meet the criteria of "*dangerousness*" under the 2008 Order I made it clear to counsel at the hearing that I did not agree with such an assessment.

[61] I agree with the pre-sentence report that the defendant is someone in respect of whom there is a high likelihood of re-offending, for the reasons set out in the report.

[62] Having considered that the risk of re-offending is "*high*" I also consider that there is a significant risk that such re-offending would cause serious harm to members of the public by the commission of further specified offences.

[63] I am particularly influenced by the opinion of Dr Christine Kennedy in her addendum report dated 1 June 2018 where she opines:

> *"2.7 Mr McEntee has a substantial number of historic risk factors which link to a risk of future violence. The risk factors of high relevance to future violence risk management and needing intervention are his violent offences, his alcohol use, his paranoid schizophrenia, his dysfunctional and traumatic background with resultant problem personality traits, his poor insight into mental health, risk profile and need for treatment, and his poor engagement with services.*
>
> *2.8 As said there is no risk assessment tool that can predict whether a further serious offence will occur. What can be said is that the risks around Mr McEntee's mental illness and insight, his dysfunctional childhood, his personality characteristics and poor resilience, and his chronic use of alcohol from early adolescence onwards are ongoing matters. Personality traits are generally considered persistent over time. Addiction is an ongoing disability and even if abstinence is achieved the condition can always relapse. Serious mental illness can be managed but can relapse especially with non-compliance with medical advice. It is not possible at present to say when all his various risk factors might be sufficiently addressed. <u>If a similar constellation of risk factors as was present at the time of the index offences was to recur, mindful of the most serious level of violence as already occurred, there is the potential for recurrence. The future violence risk for life threatening harm in my view is thus a significant one, which will require indefinite management and supervision</u>."(my underlining)*

[64] This echoes Dr East's view that Mr McEntee will need to follow a sentence plan before any return to the community.

[65] The pre-sentence report assesses the risk of dangerousness "*at this time*". The risk may not be significant "*at this time*" because of the fact that the defendant is currently compliant with the treatment plan of Dr East.

[66] As Dr East points out a serious mental illness such as that suffered by the defendant can relapse especially with non-compliance with medical advice. Given what is known about the risk factors associated with the defendant, given his previous history and also the level of violence inflicted in the course of the killing of Mr and Mrs Cawdery there is potential for recurrence. The court agrees with Dr Kennedy's opinion that the risk is "*a significant one*", which will require "*indefinite management and supervision*".

[67] A conclusion that the defendant does meet the "*dangerousness*" test is not inconsistent with the view of the Probation Service in any event.

[68] As was pointed out by Morgan LCJ in giving the judgment in the **EB** case:

> *"[17] It is readily apparent, therefore, that there is no tension between the assessment that an offender presents as a high risk of reoffending but is not assessed as representing a significant risk to the public of serious harm. It is also clear, however, that the assessment of risk carried out by the probation service is inevitably limited to a discrete period of time whereas the statutory task upon which the learned trial judge was engaged required a judgment of significant risk of serious harm over a much more prolonged period. It is unsurprising, therefore, that the sentencer may be guided by the pre-sentence report but certainly not bound by it."*

[69] The factors identified in the pre-sentence report, together with a very clear and, in my view, correct opinion of Dr Kennedy lead me to the conclusion that there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences under Article 13(1)(b) of the 2008 Order.

Life sentence?

[70] The next stage in considering the appropriate disposal is the consideration of Article 13(2)(a) and (b).

[71] The offence is one in respect of which the court can impose a discretionary life sentence. Does the seriousness of the offence justify the imposition of such a sentence?

[72] If it does not, then under Article 13(3) if the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender or further specified offences, the court shall impose an indeterminate custodial sentence.

[73] I found this the most difficult aspect of the sentencing exercise.

[74] In determining this issue I am guided by the judgment of the Court of Appeal in the case of **R v Sean Hackett** [2015] NICA 57. In the course of the judgment Morgan LCJ states as follows:

> *"[51] All parties were agreed that the only appropriate custodial sentences were a life sentence or an indeterminate custodial sentence. In both cases the subsequent release of the prisoner on licence is dependent upon an assessment of dangerousness by the Parole Commissioners. The distinctions between the two are that:*
>
> *(i) the Parole Board has a power to direct the expiry of the licence where the prisoner has been released on licence for a period of at least 10 years; and*
>
> *(ii) a whole life sentence cannot be imposed by way of an indeterminate custodial sentence. The second distinction is not material to the issues in this case.*
>
> *[52] The approach which the court should take in applying the similar provisions in England and Wales was addressed in **R v Kehoe** [2008] 1 Cr App R (S) 41 and is helpfully encapsulated in paragraph 17:*
>
> > *'When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that*

> *the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave.'*
>
> *[53] Lord Judge CJ returned to this issue in R v Wilkinson (Grant) [2009] 1 Cr App R (S) 628 where he said that the crucial difference between a discretionary life sentence and a sentence of imprisonment for public protection arising at the time of sentence is the seriousness of the instant offence as assessed in the overall statutory context. He continued at paragraph [19]: "In our judgment it is clear that as a matter of principle the discretionary life sentence under section 225 should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that a life sentence would have what Lord Bingham observed in* ***R v Lichniak*** *[2003] 1 AC 903 would be a 'denunciatory' value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years.*"

[75] In the course of the sentencing hearing Mr Irvine submitted that the culpability of Mr McEntee in this case, although diminished, was "*particularly high*". In this regard he relied upon the fact that both consultant psychiatrists supported a finding of diminished responsibility on the basis that the defendant's ability to form a rational judgment was substantially impaired. Neither found that he was unable to understand the nature of his conduct or exercise self-control, which are the other two limbs upon which a plea of diminished responsibility can be established.

[76] Specifically, Dr Kennedy points out in paragraph 6.11 of her report, referring to Mr McEntee, that:

> "*However, he is likely to have known what he was doing. There is some evidence of purposeful behaviour even if poorly executed e.g. blinds pulled, changing clothes, hiding his own clothes, driving off in a stolen car, taking a cheque book and keys indicating he may have been aware of his situation. As regards the third limb of the test, there must be an impossibility of control of own conduct not just mere difficulty. There is no evidence to support his.*"

[77] Mr Mallon reminds the court that both clinicians were satisfied that the defendant's responsibility was diminished and that at the relevant time, when he committed these offences, he was suffering from "*a very disturbed mental state*". His inability to form a rational judgment in his psychotic state means that his residual responsibility was minimal.

[78] I find this issue difficult to determine and in those circumstances I consider I should give the benefit of the doubt to the defendant and I have concluded that his "*residual responsibility*" was not "*particularly high*". However, that said, I do consider that the culpability of the defendant was more than minimal having regard to the matters identified by Dr Kennedy. However, the other factor that weighs with me is the second limb of the approach adopted in **Kehoe** namely that "*a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave*" (my underlining).

[79] This offence could fairly be described as falling into the category of "*particularly grave*". It involved a frenzied, horrific and sustained attack on two vulnerable, elderly people in their home. I consider that this is the sort of case envisaged in the cases of **Wilkinson** and **Lichniak** where a life sentence would have what has been described as a "*denunciatory value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years*".

[80] Looking through this prism, it is clear that but for the diminished responsibility of the defendant, the notional determinate sentence in this case would be very long and at the very minimum would have resulted in a tariff of at least 20 years under the guidelines set out in **McCandless** for murder cases, on a plea of guilty.

[81] Any case involving the taking of innocent lives will be shocking. However, the circumstances of this particular case, in my view, make the offences particularly grave. A life sentence would have a "*denunciatory*" value, reflective of public abhorrence of the offence.

[82] For these reasons I have concluded that the appropriate sentence is one of life imprisonment.

The appropriate tariff

[83] Having decided that a discretionary life sentence should be imposed it falls on the court in accordance with Article 5 of the Life Sentence (Northern Ireland) Order 2001 to determine the length of the minimum term the defendant will be required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence.

[84] In considering the appropriate tariff to impose, I should start by considering the relevant aggravating and mitigating factors.

[85] Self-evidently this was a truly shocking offence. It involved the unlawful killing of two elderly and vulnerable victims in their own home. The killing involved a gratuitous, frenzied and sustained attack which resulted in multiple injuries being inflicted on both victims by the use of multiple knives. It must be remembered that we are dealing here with a double killing.

[86] The defendant also has a criminal record for crimes of violence and in particular has a conviction for robbery on 19 September 2008, having entered an off licence in Warrenpoint when he had a knife in his possession and threatened the assistant.

[87] In terms of mitigation Mr Mallon argued that there was "*clear evidence*" of remorse. I am not convinced that this is so having regard to the contents of the pre-sentence report, but in any event I consider that any reduction in sentence for remorse would be minimal in the circumstances of this case. It is also correct that the defendant has had a very difficult and dysfunctional upbringing but again, in the context of such a serious offence this must be a very minor mitigating factor.

[88] The key mitigating factor of course is the fact of the defendant's diminished responsibility, as a result of which he was unable to form a rational judgment when he committed these horrific acts. This means, as a matter of law, the case must be distinguished from one of murder. Ultimately the court has to do its best to consider the issue of the defendant's culpability in these circumstances. I have indicated that the defendant's residual culpability was not "*particularly high*", however I take the view that it is more than minimal because of the factors identified by Dr Kennedy.

[89] Counsel referred me to the paper on Sentencing in Cases on Manslaughter given by Sir Anthony Hart on 9 March 2011.

[90] In the relevant section of his paper Sir Anthony Hart in relation to manslaughter cases involving diminished responsibility says:

> "*Where the defendant was suffering from diminished responsibility at the time of the offence, and his psychiatric history shows that he may continue to be a danger to members of the public in future, sentences of life imprisonment with a minimum term of 5 to 6 years are almost always imposed, although in one case (Murray) a minimum of 12 years was imposed.*"

[91] The paper then refers to a number of sentencing decisions in this jurisdiction involving cases of manslaughter. As counsel acknowledged, the court should be

careful in comparing sentences imposed in other cases, which are inevitably fact sensitive.

[92] The cases in which 5/6 years tariffs were imposed did involve cases of defendants suffering from paranoid schizophrenia but significantly only involved one victim. The case of **Murray** in which a minimum term of 12 years was imposed involved a case where a defendant pleaded guilty, on the morning of his trial, to the manslaughter of an elderly man and the rape of his elderly sister. Aggravating factors were that the defendant broke into their house, had been drinking and taking cannabis, he had a psychiatric history and was not taking his medication, and had several convictions for offences of violence. In my view a tariff of 5/6 years is inappropriate in this case primarily because of the fact that there were two elderly victims killed in shocking circumstances. Insofar as any "*read across*" is applicable this case is more closely aligned with the decision in **Murray** than any of the others to which I have been referred.

[93] Having regard to the aggravating and mitigating factors to which I have referred I consider that the appropriate tariff on a contest resulting in a finding of diminished responsibility would be in the range of 12 to 14 years.

[94] The defendant is entitled to a reduction in this tariff by reason of his plea of guilty.

[95] Having regard to the circumstances of this case I take the view that this should be considered to be an "*early*" plea. Whilst the defendant did not plead guilty at arraignment, it was made clear that he accepted that he had caused the death of Mr and Mrs Cawdery but that medical evidence was required to explore the issue of diminished responsibility. That issue was explored expeditiously. As soon as the appropriate medical evidence was obtained the defendant pleaded guilty on the basis of diminished responsibility, which plea was quite properly accepted by the prosecution.

[96] It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate.

[97] In determining what that lesser sentence should be the court should look at all the circumstances in which the plea was entered.

[98] An important aspect of all the circumstances is the stage in the proceedings at which the defendant has pleaded guilty. Maximum credit is reserved for those defendants who plead guilty at the earliest opportunity. Those who enter guilty pleas at later stages in the proceedings will obviously not be entitled to maximum credit. As a general principle the later the plea in the course of the proceedings, then the less the discount will be.

[99] A plea of guilty is an indication of remorse. The defendant's approach in this case does reveal an insight into the harm he has done. A plea of guilty and an acknowledgment of guilt by a defendant can provide a sense of justice and relief for the relatives and friends of the victim. They have been spared the ordeal of a trial in this matter and the plea has led to a saving of time and public expense.

[100] Overall I consider that the appropriate discount for the plea in this case is in the range of 25%. Accordingly I consider that the appropriate tariff which the defendant must serve before he can be considered for release is one of ten years imprisonment.

[101] In imposing this tariff I make it clear that before the defendant can be considered for release into the community it will be necessary for the Parole Commissioners to assess whether or not he can be safely released and in this regard they should have, as a minimum, access to the medical evidence which was available to this court. Furthermore, if that assessment shows that it is safe to release him, sufficient safeguards must be imposed to ensure, so far as this can be achieved, that he does not present a risk to the public after he is released. Even if he is released on licence he will, for the remainder of his life, be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

The court's sentence

[102] Returning then to the counts on the indictment I impose the following sentences.

Count 1	-	One year's imprisonment;
Count 2	-	Two years' imprisonment;
Count 3	-	One year's imprisonment;
Count 4	-	One year's imprisonment;
Count 5	-	Five year's imprisonment;
Count 6	-	Life imprisonment with a minimum tariff of ten years;
Count 7	-	Life imprisonment with a minimum tariff of ten years;
Count 8	-	Two years' imprisonment with a two year driving disqualification; and
Count 9	-	Two years' imprisonment.

[103] All of the sentences are to run concurrently.

[104] The defendant is to be given credit for periods in custody until the date of today's sentence. The remainder of the tariff will commence on the date on which the life sentence was imposed, that is today's date, 28 June 2018.